

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

OCT 26 2015

Ralph King Anderson, III, Chief Administrative Law Judge

SC Court of Appeals

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Appellate Case No. 2015-000733

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Kan Enterprises, Inc., d/b/a A1 Food Stores.....Appellant,

v.

South Carolina Department of Revenue, Ellen Fishburne Triplett,  
Keith McIver, Samuel L. Munson, Jocelyn Munson, and Michael Hill,..... Respondents.

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**INITIAL REPLY BRIEF OF APPELLANT TO INITIAL BRIEF OF  
RESPONDENTS ELLEN FISHBURNE TRIPLETT, KEITH McIVER,  
SAMUEL L. MUNSON, JOCELYN MUNSON AND MICHAEL HILL**

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## DISCUSSION OF LAW

It is obvious from the tone and tenor of the Respondents Ellen Fishbourne Trillet, Keith McIver, Samuel L. Munson, Jocelyn Munsun, and Michael Hill's ("Respondent Intervenors") Brief that this matter arises out of an attempt to permanently close Appellant's business. It is also clear that (at least in the eyes of Respondent Intervenors) that the Appellant's business has become a "scapegoat" for all sorts of neighborhood problems and issues, many of which exist far beyond the boundary lines of the Appellant's property. However, the Court in this case must look beyond the rhetoric to the law and to the facts presented to the Administrative Laws Court ("ALC") below.

### **I. THE ADMINISTRATIVE LAW COURT'S ORDER CONTAINS NUMEROUS ERRORS OF LAW**

Contrary to the argument of Respondent SCDOR, the Administrative Law Court's Order(s) contain numerous errors of law and is not supported by the evidence presented at the hearing. Appellant respectfully submits that it should be reversed by this Court.

#### **A. The Trial Court Applied the Incorrect Standard.**

The Final Orders and Decisions of the Administrative Law Judge, as well as his Order denying Appellant's post-hearing motions, are based on a misinterpretation and misapplication of the applicable South Carolina Law. As argued in Appellant's Brief, the Administrative Law Court treated this matter as it would a first time permit request and not as the renewal that it was. *Taylor v. Lewis*, 261 S.C. 168, 198 S.E.2d 801 (1973), *Byers v. South Carolina Alcoholic Beverage Control Commission*, 281 S.C. 566, 316 S.E.2d 705 (1984). The unreported ALC case of *Barfly Enterprises, LLC v. S.C. Department of Revenue*, 2013 WL 6620406 (Dec. 10, 2013), is grounded on a mistaken interpretation of the law set forth by the Supreme Court in the *Taylor* and *Byers* cases.

The application of this incorrect standard by the lower Court in this matter constitutes an error of law and warrants reversal by this Court.

**B. The Trial Court's Order Is Not Supported by the Evidence Presented at Trial.**

Even if the Trial Judge applied the correct standard in this case (which Appellant denies) the overwhelming evidence in this case does not support a denial of the renewal of Appellant's off premises beer and wine permit. Judge Anderson's Order and the Respondent Intervenors argue that the single incident where one of Appellant's employees sold alcohol to a minor, and the manner in which it was handled by Appellant, support the Order denying Appellant's permit. The evidence presented at trial establishes that Appellant did in fact deal with this issue. (Transcript of Record, pp. 35, l. 25 – 36, l. 17; pp. 53, l. 22 - 54, l. 11; R. \_\_\_\_). And while the Court and Respondents take issue with the way it was handled, there have been no other instances of violations.

The Court and Respondent SCDOR also cited the fact that calls to the police had increased and that Appellant's business has created an undue burden on law enforcement. As set forth in Appellant's Brief, this finding and this argument are not supported by the evidence presented to Judge Anderson at trial. There was ample evidence in the record that these calls were the result of Appellant's efforts to keep law enforcement informed and involved in the property and not "to take matters into their own hands." (Transcript of Record, p. 27, line 19 - p. 28, line 7: R. \_\_\_\_). Respondents' argument here penalizes Appellant (and others like him) for calling the police as the evidence of such calls will be used against him as Respondents are attempting to do here.

Further, as set forth above, it is clear that the Respondent Intervenors, are attempting to make the Appellant the "scapegoat" for all of the neighborhood's problems

involving loitering, litter and crime. The Court's Order (and the arguments of Respondents) ignore the fact that Appellant's business is located on a busy thoroughfare, and that there are other business located adjacent and close to the Appellant who sell alcohol for off premises consumption. Further, much of the loitering complained of and cited by Respondents occurs on adjacent property and not property owned or controlled by the Appellant. The evidence presented at trial does not support the harsh penalty imposed on the Appellant in this case. The Court's Order should be reversed.

**C. The Appellant Did Not Waive the Issues of Deprivation of a Vested Interest and Violation of Its Constitutional Rights.**

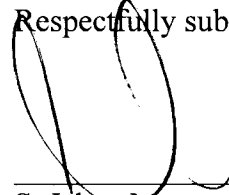
The Respondents argue that the Appellant waived the issues of deprivation of its vested interests and violation of its Constitutional Rights by not raising them before the Administrative Law Judge. This argument lacks merit. While a Rule 59(e) Motion cannot be used to raise issues that could have been raised at trial, in the present case Appellant did not know that these rights were going to be or were actually violated until it received a copy of the Administrative Court's Order containing numerous errors of law, including the application of an incorrect standard to the facts of this case. As soon as the Appellant was made aware that its rights had been violated as the result of the Trial Court's Order, it timely raised this issue in its Rule 59(e) Motion for Reconsideration. (Motion for Reconsideration R. \_\_\_\_). The cases cited by Respondents are not controlling. These issues are properly before this Court.

**CONCLUSION**

For the reasons set forth above, this Court should reject the arguments of Respondent SCDOR and should reverse the judgment of the Administrative Court Judge denying the Appellant's application for a renewal of its off premises beer and wine license.

Respectfully submitted,

By:



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October 26, 2015

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**PROOF OF SERVICE**

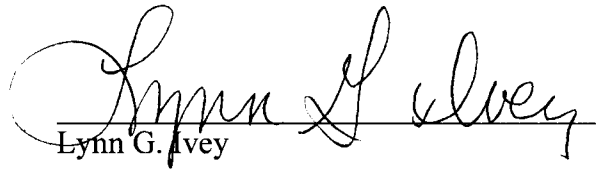
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I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, PA, certify that I have served the Initial Reply Brief of Appellant to Initial Brief of Respondents Ellen Fishburne Triplett, Keith McIver, Samuel L. Munson, Jocelyn Munson and Michael Hill by mail, to the following parties by depositing a copy of same in the United States Mail, postage prepaid, on October 26, 2015, addressed as follows:

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Lynn G. Avey

West Columbia, South Carolina

October 26, 2015



October 26, 2015

The Honorable Jenny Abbott Kitchings  
Court of Appeals Clerk of Court  
P.O. Box 11629  
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RE: Kan Enterprises, Inc., d/b/a A1 Food Stores v. SC Department of  
Revenue, et al  
Appellant No. 2015-000733

Dear Ms. Kitchings:

Please find attached to this letter the original and four copies of our Initial Reply Brief to Initial Brief of Respondents Ellen Fishburne Triplett, Keith McIver, Samuel L. Munson, Jocelyn Munson and Michael Hill. Please return the clocked copies via our courier.

By copy of this letter, we are serving opposing counsel with the same.

Thank you for your assistance with this matter.

Respectfully yours,

Lynn G. Ivey  
Assistant to John C. Bradley, Jr.

Enclosures

cc: Justine M. Tate, Esquire  
Sean Ryan, Esquire  
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